EXHIBIT E

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August 24, 2012

FHFA v. Ally Financial Inc., et al., 11-CV-7010 (DLC) (S.D.N.Y.)

Dear Judge Cote:

We represent Credit Suisse Securities (USA) LLC ("Credit Suisse") in the above-referenced action (the "7010 Action"), and we write on behalf of Credit Suisse, Barclays Capital, Inc., Citigroup Global Markets, Inc., Goldman, Sachs & Co., UBS Securities LLC, RBS Securities, Inc. and J.P. Morgan Securities LLC (together, the "Non-Ally Underwriter Defendants") to address FHFA's August 16, 2012 letter to the Court. In direct contravention of the instructions of the Bankruptcy Court and the relevant proceedings in this Court, FHFA seeks to preclude the Non-Ally Underwriter Defendants from presenting to the Bankruptcy Court their legal position that there should be full discovery of all supporting loan group files in this action—not just the sample to which FHFA now has limited its request. This Court's prior orders make clear that all supporting group loan files should be produced and that FHFA should seek all such files for the 7010 Action from the Bankruptcy Court. This Court should reject FHFA's attempt to undo those prior orders.

In their June 6, 2012 submission to the Court, defendants in the coordinated FHFA actions argued, *inter alia*, that limiting discovery to a sample of loans is tantamount to a deprivation of their Fifth and Seventh Amendment rights because such an approach could hinder their ability to present their defense and improperly would preclude any testing or questioning of the validity of the sample as discovery and expert analyses unfold. As a result, defendants argued that they must have access to all of the loan files at issue in the actions. (*See* 6/6/12 Defs.' Sampling Submission.) As the Court observed, in its submission to the Court seeking to limit the scope of loan file production, even FHFA reserved its rights to sample additional loans beyond the initial sample: "FHFA reserves its right to sample separately in the damages phase, including drawing a smaller sample of loans from non-Supporting Loan Groups." (*See* 6/6/12 FHFA's Sampling Submission 6 n.5; *see also* 6/13/12 Tr. 11, Ex. A.) On June 13, 2012, the Court rejected FHFA's request to limit discovery and held that "I am not going to restrict discovery of loan files based on a determination at this phase of the case that some kind of sampling is appropriate". (6/13/12 Tr. 14-15.) The Court stated that in order to limit discovery

to a sample, the parties would have to agree that the rest of the files were unavailable "for all purposes for all time"; because no party agreed to that point, the Court stated "I'm not going to do it unilaterally". (*Id.* at 15-16.) Since then, defendants have produced millions of pages of loan files and have subpoenaed hundreds of third parties to produce all of the loan files for the supporting loan groups at issue in these actions, and are working diligently to facilitate this production.

On July 17, 2012, the Court held a hearing in *Residential Capital, LLC v. FHFA*, 12 Civ. 5116 (DLC), to discuss production of the loan files for the supporting loan groups in the 7010 Action in the possession of Residential Capital, LLC and affiliated debtors. The Court stated that "[t]he loan files . . . are going to be essential to the prosecution of the litigation in 11 CV 7010. It is my judgment that they are also essential to the prosecution of the 16 cases before me . . . because there are seven non-affiliate defendants who are in 11 CV 7010 and one or more of the remaining 15 actions and the 16 actions are moving forward in a coordinated fashion . . . ." (7/17/12 Tr. 16, Ex. B.) Notwithstanding this Court's determination that discovery of all supporting loan group files should proceed, Plaintiff again offered to "talk to Ally and all the other defendants about limiting the burden of producing loan files" through sampling. (*Id.* at 21-22.) At no point during the conference did the Court permit FHFA to seek only a subset of the loans. To the contrary, the Court made clear that "[i]t is important that there be access to [the Non-Ally Underwriter Defendants], to *all the loan files that they're being sued upon* so that their witnesses can be prepared with respect to the entire universe of issues that they are going to face and that depositions occur just once". (*Id.* at 25-26 (emphasis added).) The Court instructed FHFA to seek the loan files for the supporting loan groups at issue from the Bankruptcy Court. (*Id.* at 26.)

On July 20, 2012, FHFA filed a motion supplement in the Bankruptcy Court to lift the bankruptcy stay for the purpose of seeking production of *all* the loan files at issue in the 7010 Action. It was not until FHFA's August 10, 2012 reply brief on that motion that FHFA suddenly changed course and sought "to limit its request at this time to a sample of only 5,000 loan files to be chosen by FHFA without prejudice to request more if necessary".[1] (8/10/12 FHFA Reply 3, Ex. B to Plaintiff's 8/16/12 letter.) FHFA's new position in the Bankruptcy Court is a clear attempt at an end run around this Court's prior orders governing discovery in these actions. Upon learning of FHFA's new position in its August 10 reply, the Non-Ally Underwriter Defendants requested to be heard at the August 14, 2012 hearing in the Bankruptcy Court on the FHFA's motion. The Bankruptcy Court granted that application. Counsel for the Non-Ally Underwriter Defendants argued that FHFA's revised position was at odds with this Court's prior orders and that all the loan files at issue in the 7010 Action must be produced.

The Bankruptcy Court granted the Non-Ally Underwriter Defendants' request for leave to file a submission on August 28 in advance of the evidentiary hearing the Bankruptcy Court set for September 11. (8/14/12 *In re ResCap* Tr. 88, Ex. C to Plaintiff's 8/16/12 letter.) Plaintiff's assertion in its August 16 letter that the Non-Ally Underwriter Defendants somehow are "interfere[ing]" with FHFA's application to the Bankruptcy Court is false. The Non-Ally Underwriter Defendants are entitled to protect their rights to seek the loan files for all loans in the supporting loan groups at issue in the 7010 Action. The Non-Ally Underwriter Defendants should not be prevented from complying with the procedure set by the Bankruptcy Court.

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[1] Once again, Plaintiff seeks to limit discovery to its sample while attempting to reserve its rights to seek more loans in the future.

Respectfully,

Richard Clary /LAM

Richard W. Clary

The Honorable Denise L. Cote
United States District Judge
United States Courthouse
500 Pearl Street, Room 1610
New York, NY 10007-1312

BY EMAIL

Copy to:

All counsel of record

BY EMAIL

EXHIBIT A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCING AGENCY	11 CV 05201 (DLC)
	11 CV 06188 (DLC)
	11 CV 06189 (DLC)
	11 CV 06190 (DLC)
v.	11 CV 06192 (DLC)
	11 CV 06193 (DLC)
UBS AMERICAS INC.	11 CV 06195 (DLC)
and others and its	11 CV 06196 (DLC)
related cases	11 CV 06198 (DLC)
	11 CV 06200 (DLC)
	11 CV 06201 (DLC)
	11 CV 06202 (DLC)
	11 CV 06203 (DLC)
	11 CV 06739 (DLC)
	11 CV 06805 (DLC)
	11 CV 07010 (DLC)
	11 CV 07048 (DLC)

June 13, 2012
3:00 p.m.

Before:

HON. DENISE COTE,

District Judge

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between 9,000 to as many as 25,533 and that's, rounding it off, 26,000 loans out of 44,000 loans, so way north of 50 percent.

I think it's apparent to me and it's certainly been apparent to the parties from the beginning that these issues can't be discussed in the abstract. You need a concrete case and for our purposes it's the UBS case. You need to understand the characteristics of the securitizations and the certificates that are at issue. So that a sampling protocol that the plaintiff may use in one case may not be the one it would use in another, and of course each defendant may have their own preferences and indeed the protocols may change from securitization to securitization. And these different approaches may each pass a Daubert analysis and may each be appropriate to present to a jury, at least that's my initial conclusion. As I say, I'm not making any judgment about that now, it would be inappropriate for me to do so.

I note that Dr. Barnett seems to think that the plaintiff's working theory of using a sampling protocol with a 95 percent confidence level is just fine, but takes issue with the margin of error that the plaintiff's statistician wishes to employ of plus or minus 5 percent, but seems to accept a plus or minus 3 percent. Well, no doubt I'll get better informed by counsel about all these matters at a later point in time.

But as important in this analysis I think it's useful for me to note that everyone here who has made a presentation

to me reserves the right to change their sampling protocol once they get more deeply involved in the specifics of the individual case. Everyone, including the plaintiffs, reserve the right to not only change those protocols but to look at information from non-supporting loan groups, as well as other loans in the supporting loan groups, and the plaintiffs want to reserve the right to reach outside the boundaries of their initial sampling group to draw on other data to address arguments defendants might make with respect to affirmative defenses or the damages phase of this litigation.

In thinking about these issues and in looking with care at the two expert reports that defense counsel have given to me, and I found them very informative and helpful, it seems that much of the complexity in this litigation in terms of discovery will arise from one of the three allegations the plaintiff is making. And that is the allegation with respect to the underwriter guidelines, underwriting guidelines. And Dr. James in particular stresses that there may be a need to resort to the loan files for the individual loans when a borrower has not met the hard criteria and I think the assumption, if not explicitly stated, is the failure to meet the hard criteria for the underwriting process will probably be apparent from the loan tapes and the analysis that can be done from the loan tapes.

It's not clear to me that that's true, but that was I

thought implied, but definitely if an exemption is being, or an exception is being taken, I think Dr. James was clear that you'd have to look into the loan file to look at the soft criteria that may have been used to support the exception.

The submissions of the parties to date make it less clear to me that there will be a need or much of a need for the loan file for the other two theories upon which the plaintiff is proceeding; the rate of owner occupancy and the LTV representations. Nonetheless -- well, before I get to the nonetheless -- among the issues that were discussed in the presentations to me were issues about loss causation and determination of damages. And in connection with those issues as well, it's not clear to me that the loan files will need to be examined. Some of the characteristics that Dr. James is talking about in terms of analyzing loss causation I expect, you will know better than I, will be apparent from the loan tapes. He talked about four things in particular: The purpose of the loan, whether it's for purchase of property or not. The type of property, whether it's a single family dwelling or not, the state in which the underwriting occurred -- Arizona, California, Florida, Nevada, and the vintage, the year, the date.

Now, I make that observation fully aware that the parties may strongly contest some of the legal analysis here, fully apart from the factual analysis and what conclusions you

draw. They may dispute whether or not some of these variables are properly considered in connection with any affirmative defense or damages, but, again, for my purposes right now I was trying to think through, well, how much of this analysis that the parties have laid out at this preliminary stage of the case is really going to implicate an examination of the individual loan files which is the extraordinarily burdensome thing that we're trying to address right now or I'm trying to address. And I want to note again as a footnote here in terms of loss causation and damages another legal issue which the plaintiffs have stressed from time to time, that on the blue sky claims there does not appear to be a loss causation affirmative defense available to the defendants, and therefore much of the discussion in the two expert reports that the defendants have given me, as useful as it was to give me an understanding and their perspective in the case, may be irrelevant to the ultimate evaluation of damages by a jury or to an evaluation of settlement value of a case. I leave that for another day. I think I invited early motion practice and was advised at our last conference that counsel thought that should wait.

Next point regarding sampling. I thought that Dr. Barnett made a very, very good point at page 37 of his report that a sampling protocol should be arrived at early, should be evaluated quickly and that a confirmation of an appropriate sampling protocol is something that can be done at

an early stage of the case. This all suggested to me that, and I think the parties have even defendants in their proposal for a schedule here, have suggested that at least some part of expert discovery should be conducted concurrently with fact discovery and I think to the extent that it involves loan performance that we should really move that part of expert discovery up, identifying the incidence of reach for any particular certificate, if necessary correlating the comparative risk of default. Therefore, the parties are going to perhaps need to or want to discuss making expert disclosures to each other on a rolling basis, the plaintiff perhaps with its sampling protocol, the results of breach and its damages calculation and the defendants with any counter protocol and what they want to show about their affirmative defenses from these loans.

I think that early exchange of these protocols and what you think your sampling techniques have shown will help sharpen fact discovery. I think it will promote a settlement analysis and help you put your resources in the rest of fact discovery where it belongs. Some of the plaintiff's claims on some certificates may fall by the wayside. Some originators may end up being far more important and significant than they would now appear once the numbers are run.

So the bottom line, and I think you probably have gathered this from what I have said, is I am not going to

restrict discovery of loan files based on a determination at this phase of the case that some kind of sampling is appropriate.

Now, everyone is well aware of, I expect, the Court's obligation under Rule 26(b)(2)(c) to control discovery. I have an independent duty to limit discovery, the frequency and extent of it, where I find it would be unreasonably cumulative or duplicative, overly burdensome, too expensive, where principles of proportionality suggest that I do so, and the manual for complex litigation suggests that Courts consider, particularly, as I say, in complex cases, using sampling techniques in discovery to limit the burden on the parties. But at this point I have no desire to opine on Daubert issues, and I think I shouldn't for many good reasons. Ordinarily it is a defendant who is resisting production of voluminous files, but these defendants are not, and the plaintiff in this case wants the flexibility to draw on all the files potentially and to revise its sampling protocols and that's entirely sensible, and I think the only way that sampling could work to reduce the burden and expense of litigation here would be if we took a percentage of the loan files and basically agreed that they were entirely unavailable to both sides for all purposes; whether it's 50 percent or 75 percent or even 25 percent, they'd have to be considered unavailable for argument at trial, unavailable for proof at trial for all parties for all purposes

for all time, and nobody is asking me to do that. So I'm not going to do it unilaterally. But I hope this discussion has suggested that if you work together to come up with a system for early disclosure of expert reports and the results of the analyses principally of the tapes and the information on the tapes that the burden of going into the individual files might be substantially reduced.

Let's talk a little bit about some of the other discovery issues that you've agreed upon or are disputing in your submissions to me. With respect to our September 30th date for substantial completion of discovery, yes, that should include third party discovery and so that discovery should be ongoing now in terms of document discovery. Serve your demands, give them a chance to produce their documents. That would include rating agencies and due diligence firms and originators.

In terms of interrogatories, the defendants want the right to serve 50 interrogatories, each corporate family of companies wants the right to serve its own 50 interrogatories on the plaintiff. The plaintiff argues for 50 interrogatories in total to be served upon it, with it having the corresponding right to serve 50 interrogatories on each corporate family. Well, let me just say a little bit about interrogatories. It is rare in my experience that they produce anything that is useful for trial. They are extraordinarily burdensome to

produce, respond to and manage, and that management includes arguing about the adequacy of the response. I think that interrogatories should be used to help support and refine other discovery requests. They should be targeted and they should be few in number. So I am going to restrict the number of interrogatories to be served on the plaintiff by all defendants in all 16 actions in total to 50, which is the number that the parties seem to be using as their working number.

You seem to have agreement about requests to admit. It wasn't clear to me that the request to admit included addressing issues of authenticity. I am assuming if there's any disagreement about this you'll bring it to my attention at the appropriate time, but I'm assuming authenticity is a separate issue and not going to be a contested one here and everybody's going to work that out. So in terms of more substantive requests to admit, we'll work on the same assumption that all defendants are restricted in total to 50 to the plaintiff and the plaintiff may serve 50 on each corporate family.

Depositions. There seems to be a lot of agreement on three points. The 30(b)(6) depositions can begin at any time. They don't need to wait for the completion of document discovery. That's fine with me. That individual defendants should be restricted to a one day deposition, that's fine with me. And that any limitation on third party depositions be

EXHIBIT B

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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RESIDENTIAL CAPITAL, LLC, et al.,,

Plaintiffs,

v. 12 CV 5116(DLC)

FEDERAL HOUSING FINANCE AGENCY,

Defendant.

----------x

New York, N.Y.
July 17, 2012
3:30 p.m.

Before:

HON. DENISE L. COTE,

District Judge

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throughout the Minneapolis/St. Paul area.

THE COURT: There is argument by counsel in their papers about a stocking horse agreement and I am not sure that I understand the impact of the Ally Financial stocking horse agreement on any of this litigation. It is my understanding that pursuant to that agreement, Ally Financial may be buying the legacy portfolio, which would contain the loans at issue in 11 CV 7010, but whether it does or doesn't make that purchase, I am not sure how that is supposed to impact our analysis.

Is there anyone who wishes to speak to that?

MS. LEVITT: Your Honor, only to say that our position is there is no relevance to that stocking horse bid. First of all, it is unclear who will end up being the successful purchaser of the legacy files. Also, my understanding is Judge Glenn found that had no relevance to this analysis.

THE COURT: That is Ms. Levitt again.

MS. LEVITT: Yes. I apologize, your Honor.

MR. BROWN: Your Honor, if I may, Judson Brown of Kirkland & Ellis. So the record is straight, your Honor, Ally Financial, had been the stocking horse bidder for that legacy portfolio; but as I understand it, the bankruptcy proceedings at Ally Financial isn't currently the stocking horse bidder.

MS. LEVITT: That's correct, your Honor. There is another potential purchaser is the stocking horse, but we don't know how that will turn out.

THE COURT: There is another question that I had. The loan files -- and we don't know the number, but it is a knowable number, something less than 105,000 apparently -- are you going to be essential to the prosecution of the litigation in 11 CV 7010. It is my judgment that they are also essential to the prosecution of the 16 cases before me for reasons I discussed in last week's telephone call because there are seven non-affiliate defendants who are in 11 CV 7010 and one or more of the remaining 15 actions and the 16 actions are moving forward in a coordinated fashion with an understanding -- well, it is hope that through coordinated discovery, there will be efficiencies for the party and ultimately savings for all concerned.

The first parties to be deposed beginning in January are FHFA, which would need access to all the documentation that was important, certainly at a minimum the loan files, and UBS who is a defendant in 11 7010 and three other cases before me and a case in California that is related. So those depositions will begin in January.

It is my understanding, and nobody has argued to me the contrary, that when a debtor is in bankruptcy proceedings, it is not immune from discovery and whether it is in bankruptcy or emerges some day from bankruptcy with its assets, in this instance the loan files retained by it or some other entity, whoever has those loan files is going to have to produce them.

Therefore, in the restructuring process or the reorganization process that is ongoing before the bankruptcy court, I would understand that all the parties, including any potential bidders for assets, would be evaluating the burdens of participating in the inevitable discovery.

Now, Mr. Lipps in his affidavits has describe some of the costs associated with the production of material. He has a figure that on average it takes $25 per file to produce a loan file. I assume that number is influenced by how many of the documents or loan files are entirely electronic and how many are composite and how many arn't electronic at all. Again, we don't know the number of loan files in our supporting loan books here.

So it seems to me that when it comes down to the arguments with respect to indemnification for defense costs or wasting insurance policies that those arguments have to be weighed in the context of understanding that this discovery is going to occur and there will be a cost to participation in this discovery and that the cost is affecting the economics of the restructuring, whether or not the documents are produced today or in the future.

Ms. Levitt.

MS. LEVITT: Your Honor, there are two things that I need to address with respect to your Honor's question or position. One, it is our understanding that the debtors will

extraordinarily burdensome discovery in another case, as well as the time to prepare for depositions or whatever might occur, that I believe the bankruptcy court would find that to be not a good use of resources both monetary and time. It will have an effect on the ultimate recovery to creditors. But, your Honor, I apologize that I cannot tell you how that factors in at this point other than to repeat what I think was probably not responsive but which is that this short delay while on the flip side allowing debtors to consummate this reorganization, we submit is reasonable in terms of the overall management of this case.

THE COURT: Mr. Glenn, I am focusing now on the loan tapes and the loan files. Is there anything immediately critical in terms of discovery from ResCap beyond those two items?

MR. GLENN: I am going to defer to Ms. Leung on that point who is handling the.

MS. LEUNG: First of all, I think that it is difficult for us to answer that question because we don't have any transparency into what Ally has versus what the debtors have. Your Honor has seen the objections that have been interposed by Ally Financial and Ally Securities for document requests. I think it was one of the exhibits to the motion where they object to the document requests on the grounds that it is in the possession of debtors or its property estate subject to the

automatic stat. We don't really have transparency into that and so it is difficult for us to when we're talking to them to know in terms of should they be searching the custodial files for ResCap or should they be searching the files or e-mails of employees of ResCap. We're not really sure because we don't have any, like I said, transparency or window into Ally and ResCap.

So one solution might be to have a 30(b)(6) deposition so that we can get that clarity in terms of what does Ally have versus what does the debtors have, how much access does Ally have over ResCap's files. As you know it is our position that Ally does have access to all of ResCap's and the debtor's files and personnel by virtue of, among other things, the shared services agreement. We think that is a relevant legal question, not whether the debtors have title to certain documents but whether they have access to it. We do need other types of documents, but it is difficult for us to say that it is in the possession of the debtors and we need it right now because we don't know what one entity possesses versus what another entity possesses. That is the first point.

I know your Honor didn't ask this, but I do want to address the issue of the loan files, because that has come up in terms of how burdensome the discovery is going to be. At the outset plaintiff has always been willing to talk to Ally and all the other defendants about limiting the burden of

producing loan files. That was the purpose of trying to get out our sample protocols early and try to limit the universe of loan files that would have to be produced. That is still a conversation that we're willing to have with Ally and the debtors in terms of minimizing the number of loan files that we need to reproduce and the burden to them, whether there are other ways we can reduce burden by, for example, getting copies of what is already being produced in the bankruptcy litigation that might overlap with the discovery that we're looking for. So we're certainly open to having that conversation with the debtors and with Ally and Ally Securities.

So I can't point to anything immediately besides the loan tapes and the loan files that we need that would be in the possession of debtors, but I would like to reserve on that because like I said we just don't know enough.

THE COURT: I am not going to give you a ruling on the shared services agreement argument until there has been an application to Judge Glenn for production of documents, and it has not been fruitful to make that application.

So I don't have an answer on the question that I posed, which stems from this fact: Whether or not ResCap is a defendant in any litigation, it is holding in its physical possession documents which are critical to litigation and they include at least the loan files. There will be a cost in production of those loan files. There will be a cost of being

a witness in the various lawsuits that have arisen out of ResCap's business, whether it is a defendant or not in those litigations. That is known. That is not unknown. Everyone knows that ResCap or any restructured entity is going to have some litigation to deal with in the future, whether it is a defendant or not, because it possesses critical documents.

So it seems to me the arguments about the wasting insurance policies and even the indemnification arguments, indemnification for defense costs are impacted, both of those arguments, by that financial reality.

So I have already ruled that the stay cannot be extended because of the anti-injunction bar to the defendants. I personally don't find the Section 105 analysis very strong either. I don't need to reach it because I wouldn't have jurisdiction to extend the stay, but I don't find that ResCap has made a strong enough showing even if it were within my jurisdiction to consider the Section 105 argument.

The critical thing that has to happen right now, and it is important that it happen right now, is production of the loan tapes and the loan files. I don't see that there is any risk of prejudice to a debtor on collateral estoppel or res judicata grounds. The cost is hard to quantify now because we don't know how many loans are part of the supporting loan groups. We don't know how many of those loans are electronically available, but that is an expense that is going

to have to be borne at some point no matter what. It is not an expense that is going away.

I don't think production of either the loan files or the loan tapes is something that is going to involve management of ResCap. These are ministerial duties, clerical duties to gather these documents. I don't see how they would be interfering in any way with the involvement of management in making judgments or negotiating a restructuring.

I want FHFA to go in the first instance to Judge Glenn. I have already told you to do that with respect to the loan tapes. I want you to do that with respect to the loan files as well. I have read his decision of July 10th with respect to Western and Southern Life Insurance and I think that decision is quite distinguishable and not terribly predictive of what is going to happen with your application here.

In the Ohio case, the Western and Southern Life Insurance case, as I understand it there were five securitizations that were at issue out of about 61 or so. Here every securitization in this lawsuit is at issue and cannot proceed without production of the loan files and the loan tapes. Here there are seven non-affiliated defendants against whom this litigation will continue no matter what happens with ResCap, and it is not a defendant, or the Ally defendants.

It is important that document discovery proceed quickly so that counsel and their experts have an opportunity

to review the documents and prepare for the January depositions. As I mentioned, the FHFA and UBS depositions begin in January and both are parties to 11 CV 7010.

I notice with some interest the discussion the page 133 of the transcript of Judge Glenn's decision in which he pointed out that when the parties hold an indirect direct claim against a non-debtor for violating the federal securities laws, there is no compelling basis by which a court must extend the automatic stay. There are claims here, direct claims, against Ally and the Ally entities. I also emphasize the point I have already made that these documents are going to have to be produced and knowledge of that expense will affect the organization whether or not that expense is incurred today or later.

I have no showing that there is any significant participation of any individual critical to the reorganization in the production of the loan files or the loan tapes. Again, we're talking about a period in which the only thing that has happened is production of documents. I want to underscore that this issue isn't confined to the impact production of these critical documents will have just on 11 CV 7010. That is one of 16 cases before me. The seven non-Ally underwriter defendants are involved in a number of lawsuits. It is important that there be access to these entities, to all the loan files that there being sued upon so that their witnesses

can be prepared with respect to the entire universe of issues that they are going to face and that depositions occur just once. The depositions will begin in January. It is too late to wait to produce those documents until later this fall.

With respect to the law about discovery of a debtor, during the bankruptcy process, of course this is something that the Ninth Circuit has spoken of in the Miller case, 262 BR 4909, as the Ninth Circuit noted at page 505, information is information, and when it is in the possession of a debtor, it is discoverable. More recently Judge Dolinger permitted depositions to occur of a debtor's employees in the Signature Bank case, 2008 WL 4126248, noting that the automatic litigation stay in Section 362 does not prevent discovery in a current lawsuit even if the depositions in question unearth information that may be relevant to the bank's state claims against a debtor.

I know the parties are familiar with the Johns Manville case from 1984, which can be found in 40 BR 219. But even there the test is, as articulated in that court, one of significant interference with a debtor's reorganization efforts. For all the reasons I have already described, I don't think that the limited production of loan tapes and loan files can meet that test, but I want FHFA to go to Judge Glenn in the first instance and if need be you can come back to me. If you need a 30(b)(6) deposition of Ally, go ahead and schedule it.

Take it next week if you need. Time's a wastin. We need to get all the critical documents produced so that they can be analyzed before depositions begin in January.

Ms. Levitt, is there anything you wish to add?

MS. LEVITT: No, your Honor. Thank you.

THE COURT: Mr. Glenn?

MR. GLENN: Just by way of update, your Honor. We're filing the motion for Judge Glenn today. That motion will include only the loan tapes consistent with the last court conference. We'll supplement that motion to include the loan files hopefully with and next 24 to 48 hours.

THE COURT: Thank you.

MR. GLENN: Thank you.

THE COURT: Is it Mr. Goeke?

MR. GOEKE: Yes, your Honor. Nothing further.

THE COURT: Mr. Lipps.

MR. LIPPS: Nothing further, your Honor.

THE COURT: Does anyone else wish to add anything or be heard?

Not hearing anyone, thank you so much.

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